

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the matter of

Implementation of Section 203 of the
Telecommunications Act of 1996

Broadcast License Terms

MM Docket No. 96-90

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

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**REPLY COMMENTS OF
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The following comments are submitted by the Association of Local Television Stations, Inc. ("ALTV"), in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding.¹ ALTV is a non-profit, incorporated association of broadcast television stations unaffiliated with the ABC, CBS, or NBC television networks.² ALTV's member stations will be affected directly by the Commission's action in this proceeding.

¹FCC 96-99 (released March 11, 1996)[hereinafter cited as *Notice*].

²Local stations among ALTV's members include not only traditional independent stations, but also local television stations affiliated with the three emerging networks: Fox, UPN, and WB. As used herein, the term "local television stations" includes ALTV member stations, but excludes affiliates of ABC, CBS, and NBC.

The comments filed in this proceeding offer no basis for departure from the Commission's proposal to extend television license terms from five to eight years. They similarly offer no reason to step outside the bounds of this proceeding and place additional requirements on local television stations.

The only comments which take exception to the Commission's proposal are those of the Media Access Project ("MAP") and Center for Media Education ("CME").³ They contend first that the Commission should extend the license term to eight years only if the Commission also adopts quantitative public interest requirements for "locally-originated programming addressing community issues, news, and children's educational programming" and otherwise that extension of the license term to eight years would not serve the public interest.⁴ Neither contention has merit.

The MAP/CME proposal that the Commission adopt quantitative public interest requirements far exceeds the scope of this proceeding, rests on a convoluted reading and myopic understanding of the underlying statute, and epitomizes a regulatory response to a problem which does not exist. This proceeding has nothing to do with the substantive public interest requirements applicable to local television stations. MAP/CME imply a *quid pro quo* which Congress never contemplated -- and the Commission certainly made no mention of in its *Notice*. They argue that "broadcasters should not be afforded longer terms unless they provide more to the public...."⁵ No support for such a nexus between the longer license term and the amounts of any particular type of programming provided by local television stations appears anywhere in the statute or the legislative history.

³Comments of the Media Access Project and Center for Media Education, MM Docket No. 96-90 (filed May 20, 1996) [hereinafter cited as "MAP/CME"].

⁴*Id.* at 4.

⁵MAP/CME at 4.



The MAP and CME attempt to fashion such a connection is futile. They argue that the inclusion of “the requirement that the increased terms must serve the public interest can only mean that Congress meant to make *benefit to the public* a condition for 8 year license terms.”⁶ Such an interpretation adds a gloss to the statute which Congress hardly contemplated. MAP/CME’s reliance on the conditional clause (“if the public interest, convenience, and necessity would be served thereby”) is misplaced. The conditional clause is tied not to the term, but to the renewal *per se* of the license. The same conditional clause appears in the previous version of Section 307(c) of the Act, but there, of course, in the context of five year terms for television and seven year terms for radio. This conditional clause does no more than confirm the Commission’s obligation to make a public interest determination that grant of a license renewal application is warranted in each particular case. It has no bearing whatsoever on whether *as a general rule* license terms should be eight years.⁷

Even MAP/CME’s public interest rationale for tying longer license terms to quantified public interest programming requirements is utterly specious. Their pronouncement that the combined effect of the longer license term and “two-step” renewal process will be “virtually no public review of broadcasters’ performance” ignores law and reality.⁸ The new renewal procedure in no way diminishes the public’s ability to scrutinize station performance and convey their views to the Commission. The public remains able to file petitions to deny and informal objections with

⁶MAP/CME at 2.

⁷By the same token, the language in the statute cited by MAP/CME which forbids adoption of a rule which would preclude the Commission from renewing a license for a shorter period also appears in identical form in old Section 307(c) and, again, only preserves the Commission’s authority to grant short-term renewals in particular cases. It has no bearing on whether the license term for local television stations is eight years as a general rule.

⁸MAP/CME at 3.



respect to any application for renewal of a local television station's license.⁹ Stations remain subject to comprehensive public file requirements.¹⁰ The Commission still must make a determination that the station has served the public interest.¹¹ Indeed, the new renewal procedure does no more than defer consideration of *other* applications for the station's facilities until the Commission has denied the station's application for renewal of license.¹² Furthermore, nothing precludes public complaints to the Commission about station operations during the course of the license term. The Commission's power to revoke a station license based on such a complaint at any time during the license term is undiminished.¹³ Thus, the public retains every opportunity to review station performance and bring shortcomings to the Commission's attention.¹⁴

Finally, MAP/CME allege no marketplace failure or overall decline in local television stations' performance which might justify Commission inquiry into resurrection of long-interred rules relating to the quantity of various program types provided by local television stations. To the contrary, MAP/CME emphasize that "many broadcasters do comply with their public trustee obligations under the Communications Act and provide programming which serves their

⁹47 U.S.C. §309(d)(1).

¹⁰47 CFR §73.3526.

¹¹47 U.S.C. §307(k)(1)(A).

¹²47 U.S. C. §307(k)(3)(B).

¹³47 U.S.C. §312(a).

¹⁴As the Commission observed in 1984 in the course of "deregulating" television:

[T]he record keeping requirements adopted here will provide us with the information necessary to monitor the performance of our new regulatory scheme. In addition, there are other formal and informal procedures readily available to bring specific problems to our attention.

communities, provides information, and enriches children.”¹⁵ Indeed, in 1984 the Commission was confident that “existing and future marketplace forces will ensure presentation of programming that addresses significant issues in the community.”¹⁶ Nothing has been presented herein to shake the Commission’s confidence one iota. Therefore, no basis whatsoever exists for consideration of quantitative standards for public interest programming in this or any other proceeding.

In sum, no sound legal basis for tying extension of the license term to eight years for local television stations to adoption of new programming requirements or guidelines has been shown, no legitimate concern about reduced public scrutiny of local television station performance has been raised, and no allegation of market failure or lackluster performance by local television stations has been made. In the vernacular, one might suggest with a degree of whimsy that MAP/CME’s spaghetti is sliding rapidly and unceremoniously down the wall.

One also might view the quibbling about what Congress meant with a like degree of insouciance. However, ALTV hastens to say that Congress obviously expected the Commission to extend the license term for local television stations to eight years. The Conference Report *describes* Section 203, stating unambiguously that it “extends the license term for broadcast licensees to eight years for both television and radio.”¹⁷ The “up to” language remained in the law, as it always had, in recognition of the Commission’s authority to grant particular license renewals for shorter periods of time when so required by a public interest determination by the Commission. Furthermore, the new eight year term provision makes little sense unless Congress intended the Commission to extend license terms as a general rule. This is further confirmed by the lack of any provision for a Commission proceeding to implement the new license terms. Although the new Act

¹⁵MAP/CME at 3, n.1.

¹⁶*Commercial Television Stations*, *supra*, 98 FCC 2d at 1114.

¹⁷S. Conf. Rep. 104-230, 104th. Cong., 2d. Sess. 164 (1996).

mandated numerous rulemaking proceedings to implement specific provisions of the Act, the license term provision was unaccompanied by any mandate to conduct a proceeding in which any considerations might be weighed against a general extension of the license term. Therefore, the Commission has proceeded in full accord with Congressional intent in proposing a general extension of local television station licenses to eight years.

Finally, ALTV lauds the Commission's rationale for proposing a general and immediate extension of local television stations' license terms beginning with the recently-begun renewal cycle. The benefits of reducing paperwork burdens for local television stations and the government alike hardly may be considered outside the realm of public benefits, MAP/CME's assertions notwithstanding.¹⁸ Local television stations are pressed increasingly by burgeoning competition from other video media to do more with less, *i.e.*, to continue to provide an attractive, responsive program service -- which includes considerable amounts of public interest programming -- while broadcast television's audience share tend to decline. Lifting of paperwork burdens reduces the diversion of station resources to unproductive tasks *vis-a-vis* stations' provision of program service to their communities. No one rationally could deny that greater availability of resources for program acquisition and production improves broadcast television service to the betterment of the public.

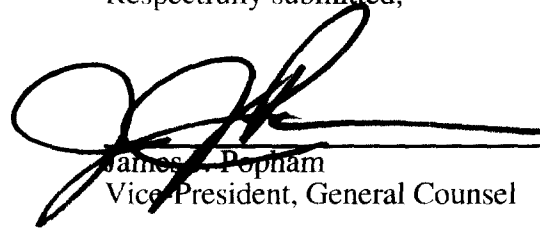
The federal government likewise is subject to declining resources in the face of ever increasing expectations. Again, elimination of unnecessary and unproductive regulatory tasks permits a more optimal distribution of limited resources. The Commission in particular -- faced with a plethora of new rulemaking proceedings to implement the new Act -- must appreciate fully the need to allocate resources to tasks which offer the greatest public benefit. Thus, contrary to

¹⁸MAP/CME at 5.

MAP/CME's view, conservation of resources by local television stations and federal agencies is a matter of *public* interest and benefit.

In view of the above, ALTV urges the Commission to adopt its proposal to extend local television station license terms to eight years and to reject MAP/CME's proposal to apply new quantitative programming requirements on local television stations.

Respectfully submitted,



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